

Petition for Rulemaking

Supplement

A petition for rulemaking in the Amateur Radio Service, concerning Covenants, Conditions, and Restrictions ("CCRs") and other deed restrictions prohibiting the installation of amateur radio antennas

When the Commission passed PRB-1 in 1985, it declined to address the issue of CCRs and other deed restrictions prohibiting the installation of amateur radio antennas, arguing that these were contractual agreements between private parties and therefore outside the scope of the limited federal preemption.

In so doing, the Commission left open a loophole by which municipalities might circumvent PRB-1 with impunity, by encouraging real estate developers to write just such CCRs and deed restrictions. The dearth of such restrictions prior to the passage of PRB-1, and the proliferation of them since, leave little doubt that municipalities have indeed embraced and taken advantage of this loophole, as there are now many areas around the country where it is virtually impossible to purchase a new home without such restrictions. It should also be noted that a Covenant Agreement is *not* actually an agreement entered into voluntarily by the homebuyer, but rather an agreement between the original seller of the land and the developer, and forced upon the homebuyer in the form of a "contract of adhesion." Furthermore, the amendment process for most CCRs makes it extremely difficult, if not impossible, to have an objectionable restriction repealed, often requiring approval of 90% of the homeowners, and even approval by the municipality (a questionable entanglement).

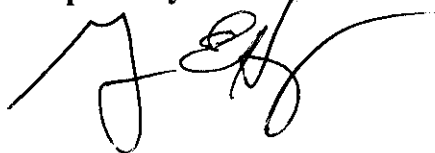
While the Commission has declined to revisit this issue on previous occasions, the problem of CCRs has grown to such a level that I believe Commission action is now warranted. The passage of the OTARD rule in 1996 made clear that the Commission has the authority to preempt such contractual agreements, and in light of the September 11th attacks, it must certainly be argued that the federal government's Homeland Security interest in the ability of amateur radio operators to communicate effectively at all times and under any circumstances, *alone* far outweighs any governmental interest in the ability of the public to receive commercial over-the-air broadcasts, such as OTARD facilitated. It is also in the *public* interest to remove these restrictions on amateur radio installations, as the public directly benefits from the ability of amateur radio operators to communicate in other disaster situations, such as the recent Florida hurricanes, when all other systems are either inoperative, crippled, or overloaded.

I therefore petition the Commission to amend PRB-1 to bring Covenant agreements and other prohibitive deed restrictions under the umbrella of the limited federal preemption. The closing of this glaring loophole is long overdue.

No. of Copies rec'd
List ABCDE

074

Respectfully submitted this 28th day of April 2005,

A handwritten signature in black ink, appearing to read 'G. Henry', with a long horizontal flourish extending to the right.

George E. Henry, Amateur Radio licensee KA3HSW
FRN 0003560695
1282 Oriole Trail
Carol Stream, Illinois, 60188
E-mail ka3hsw@earthlink.net
Telephone (630) 776-1637